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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

MERRIL et al.

Serial Number: 08/879,139

Group Art Unit: 1643

Filed: June 19, 1997

Examiner: D. Wortman

For: ANTIBACTERIAL THERAPY WITH BACTERIOPHAGE GENOTYPICALLY
MODIFIED TO DELAY INACTIVATION BY THE HOST DEFENSE SYSTEM

DECLARATION

Assistant Commissioner for Patents
Washington, D.C. 20231

June 21, 1999

Sir:

I, Debbie L. Orrison, a citizen of the United States, hereby declare and state:

1. I was the docket clerk at the firm of Nikaido, Marmelstein, Murray & Oram LLP (referred to herein as the firm) as of October 2, 1998.
2. As the docket clerk at the firm at that time, my duties included following the docketing and USPTO filing procedures for the firm, including reviewing all mail received from the USPTO and docketing all due dates created by that mail in the Master Docket, which I maintained in the manner described in the Appendix attached to the Declaration by Mr. George E. Oram, Jr.
3. Upon examining the Master Docket after receiving the facsimile transmission of June 15, 1999 from Donna C. Wortman, Ph.D. in reference to the above application, I noted that the Master Docket contains no notation of any due date for a response to the

Office Action in the above application on January 2, 1999 (i.e., three months from the alleged date of mailing of the Office Action in the above application). ATTACHMENT 1 is a true and correct copy of the printout of the Master Docket for January 2, 1999.

4. I have been instructed on the importance of ensuring that the Master Docket reflect every due date established by mail received by the firm from the USPTO.

5. I am not aware of any occurrence where an Office Action (in an application where the applicant has not instructed us to abandon the application) was mailed to the firm and received by the firm, but was not docketed in the Master Docket.

6. Based on the above, it is my belief that the October 2, 1998 Office Action concerning the above application was never received by the firm.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Debbie L. Orrison



6/18/99
Date

Enclosure:

ATTACHMENT 1

Wednesday, December 30, 1998

Due Date List By Date

Page: 9

		From	01-Jan-1999	To	03-Jan-1999			
Due date	Reason for Date/ Date Type	Action Base Date	Action Type	Case Number	Country	Attorney	Client/ Case Type Number	Application Filing Date
01-Jan-1999	Foreign Filing Due	01-Jan-1999	Foreign Filing	00021-752	US	CJJ	ORD	01-Jan-1998
	Final					GEO		
	Status:	Granted						
02-Jan-1999	N/A E-1	02-Sep-1998	NOT. OF APPEAL	00021-4049	US	1	RJB	00021 08/901940
	Due Date						CON	29-Jul-1997
	Status:	PENDING						
02-Jan-1999	FINAL E-1	02-Sep-1998	US-FINAL	00021-4049	US	1	RJB	00021 08/901940
	Due Date		3MONTH	—			CON	29-Jul-1997
	Status:	PENDING						
02-Jan-1999	ISSUE FEE DUE	07-Oct-1998	US-Allowance	00021-752	US	EME	00021	08/956080
	Due Date					DIV		22-Oct-1997
	Status:	PENDING						
02-Jan-1999	Foreign Filing Reminder	02-Jul-1998	Foreign Filing	00021-8034	US	CMM	00021-09/109899	02-Jul-1998
	Due Date					ORD		
	Status:	Pending						

Filed 1/4/99
✓ 12/31 per RJB

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		From	01-Jan-1999	To	03-Jan-1999				
Reason for Date/ Date Type	Action	Base Date	Action Type	Case Number	Country	Attorney	Client/ Case Type	Application Number	Filing Date
02-Jan-1999 STATUS CK Follow Up D	02-Jul-1998	STATUS CK		00186-6024	US	CMM	00186	08/775876	02-Jan-1997
Status: PENDING									
02-Jan-1999 Foreign Filing Reminder	02-Jul-1998	Foreign Filing		00186-8023	US	CMM	00186	09/10/8898	02-Jul-1998
Status: Pending									
02-Jan-1999 3 MON RESPONSE	02-Oct-1998	US-3MON.		00353-6037	US	DHG	00353	08/768098	16-Dec-1996
Status: PENDING		ACTION				ORD			
02-Jan-1999 DRAWINGS DUE	02-Nov-1998	DRAWINGS DUE		00353-7039	US	DHG	00353	08/976575	24-Nov-1997
Status: PENDING						ORD			
02-Jan-1999 Foreign Filing Reminder	02-Jul-1998	Foreign Filing		00353-8030	US	CMM	00353	09/109900	02-Jul-1998
Status: Pending						ORD			

6/2/98

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Due Date	Reason for Date/ Date Type	Action Base Date	Action Type	Case Number	Country	Attorney	Case Type	Client/ Application Number	Filing Date
02-Jan-1999	Foreign Filing Reminder	02-Jul-1998	Foreign Filing	00353-8031	US	CMM	00353	09/10897	02-Jul-1998
	Due Date							ORD	
	Status:	Pending						✓	
02-Jan-1999	3 MON RESPONSE	02-Oct-1998	US-3MON.	00514-7002	US	JLH	00514	08/76839	02-Apr-1997
	Due Date		ACTION				ORD		
	Status:	PENDING						✓	2/2/99
02-Jan-1999	6 MON FINAL	02-Jul-1998	US-3MON.	00518-7005	US	JLH	00518	08/840071	24-Apr-1997
	Final		ACTION				ORD		
	Status:	PENDING						✓	
02-Jan-1999	3 MON RESPONSE	02-Oct-1998	US-3MON.	00564-7003	US	MCK	00564	08/776188	24-Jan-1997
	Due Date		ACTION				ORD		
	Status:	PENDING						✓	
02-Jan-1999	FILEAPPLN.-	28-Dec-1998	NEW APPLICATION	00564-8030	US	RBK	00564		
	Reminder						ORD		
	Status:	Unfiled						✓	ext 117

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Due Date List By Date

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From 01-Jan-1999 To 03-Jan-1999

Reason for Date/ Due Date	Action Date Type	Case Number	Client/ Application Number	Filing Date
Due Date	Base Date	Country	Attorney	Case Type
02-Jan-1999 Information Disclosure Stmt	02-Oct-1998	Information	00725-8027	US DTN 0725 09/165299 02-Oct-1998
<u>Due Date</u>	<u>Base Date</u>	<u>Country</u>	<u>Attorney</u>	<u>Case Type</u>
Status: Pending				
02-Jan-1999 1-MON-EXTENSION	02-Sep-1998	US-3MON	00734-6007	US GEO 00734 00726299 02-Oct-1996
	Due Date	ACTION	ORD	✓ 0 + 40 2/2/99
	PENDING			
02-Jan-1999 FILEAPPLN	28-Dec-1998	NEW APPLICATION	00813-8018	US DTN 00813 ORD
<u>Reminder</u>				
Status: Unfiled				
02-Jan-1999 ISSUE FEE DUE	07-Oct-1998	US-Allowance	01204-8010	US RBM 01204 09/121130 23-Jul-1998
	Due Date	US	ORD	✓ 12/31
	Pending			
02-Jan-1999 PYMT OF GRANT & REN	03-Nov-1998	GRANT AND RENEWAL FEES	01580-5004	RU RBM 01580 95110932.04 07-Mar-1995
<u>Reminder</u>				
Status: PENDING				
Remarks: Final 3.3.99. FA wants our instrucs by 2.22.99.				

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		From	01-Jan-1999	To	03-Jan-1999			
Reason for Date/ Date Type	Action Base Date	Action Type	Case Number	Country	Attorney	Client/ Case Type	Application Number	Filing Date
02-Jan-1999 Information Disclosure Stmt	02-Oct-1998	Information Disclosure Stmt	01580-8009	US	RBH	01580		02-Oct-1998
Status:	Pending					ORD		✓ A
02-Jan-1999 ISSUE FEE DUE	07-Oct-1998	US-Allowance	01614-5018	US	MCK	01614	08/454186	15-Jun-1995
						ORD		
Status:	PENDING							
02-Jan-1999 6 MON FINAL	02-Jul-1998	US-3MON. ACTION	01614-7023	US	KLW	01614	08/870383	06-Jun-1997
						ORD		
Status:	PENDING							
02-Jan-1999 6 MON FINAL	02-Jul-1998	US-3MON. ACTION	01614-7088	US	MCK	01614	08/973877	07-Jan-1998
						ORD		
Status:	PENDING							
02-Jan-1999 3 MON RESPONSE	02-Oct-1998	US-3MON. ACTION	01614-7102	US	RJB	01614	08/998888	19-Dec-1997
						CON		
Status:	PENDING							

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		From 01-Jan-1999 To 03-Jan-1999			
Due date	Reason for Date/ Date Type	Action Base Date	Action Type	Case Number	Country Attorney Client/ Case Type Application Number Filing Date
02-Jan-1999	ANNUITY.FEE. Reminder	24-Feb-1998	ANNUITY FEE	01622-3007	GB RBM 01622 8305104 24-Feb-1983
	ISSUED				LMB ORD
02-Jan-1999	SEND LTR TO CLIENT- Reminder	23-Nov-1998	FRGN ANALYSIS	02241-3016	FI LTR SNK 02241 932596 07-Jun-1993
	PENDING				LMB PCT
	Remarks: Response to Office Action due by 5.23.99.				
02-Jan-1999	Foreign Filing Reminder	02-Jul-1998	Foreign Filing	03022-8005	US RBM 03022 02-Jul-1998
	Due Date				ORD
	Status: Pending				
02-Jan-1999	Foreign Filing Reminder	02-Jul-1998	Foreign Filing	03022-8006	US RBM 03022 02-Jul-1998
	Due Date				ORD
	Status: Pending				
02-Jan-1999	3 MON RESPONSE	02-Oct-1998	US-3MON. ACTION	03213-8007	US EME 03213 09/04/1758 13-Mar-1998
	Due Date				ORD
	Status: Pending				

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✓ 2/24/99
✓ 2/24/99

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		From	01-Jan-1999	To	03-Jan-1999			
Reason for Date/ Date Type	Action Base Date	Action Type	Case Number	Country	Attorney	Client/ Case Type	Application Number	Filing Date
02-Jan-1999 ISSUE FEE DUE	07-Oct-1998	US-Allowance	07134-6019	US	SNK	07134	08/700772	06-Sep-1996
Status: PENDING					ORD			
02-Jan-1999 N/A E-3	02-Jul-1998	NOT. OF APPEAL 07292-6002	US	DHG	07292	08/653410	24-May-1996	
Status: PENDING				DIV				
02-Jan-1999 6 MON FINAL	02-Jul-1998	US-3MON.	07348-6030	US	EME	07348	08/715485	18-Sep-1996
Status: PENDING		ACTION		ORD				
02-Jan-1999 3 MON RESPONSE	02-Oct-1998	US-3MON.	07348-7009	US	DHG	07348	08/833173	04-Apr-1997
Status: PENDING		ACTION		ORD				
02-Jan-1999 REQUEST RECONS.	02-Dec-1998	RECONSIDERATI	07348-7049	US	CMM	07348	08/930602	10-Oct-1997
Status: PENDING		ON		ORD				

✓ View Final Action Received

✓ 12/31

✓ 12/31

✓ 12/14 ✓

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		From	01-Jan-1999	To	03-Jan-1999				
Due Date	Reason for Date/ Date Type	Action Base Date	Action Type	Case Number	Country	Attorney	Client/ Case Type	Application Number	Filing Date
02-Jan-1999	Information Disclosure Stmt	02-Oct-1998	Information Disclosure Stmt	07400-8024	US	DTN	07400	09/165284	02-Oct-1998
Status:	Pending	Due Date						ORD	
02-Jan-1999	AMENDMENTS DUE	03-Nov-1998	ARTICLE 19	08061-8006	WO	RBML	08061	US98/13591	09-Jul-1998
Status:	Final			LMB		ORD			
Remarks:	Article 19 amendments are due at the IB by 1.3.99.								
02-Jan-1999	11 MONTH REMINDER	02-Feb-1998	FOREIGN FILING- 08172-8009	US	DHG	08172			02-Feb-1998
Status:	Reminder		PROVISIONAL			PRO			
02-Jan-1999	Filing Due		File Application	08172-8009	US	DHG	08172		02-Feb-1998
Status:	Final					PRO			
02-Jan-1999	FILE COMP APPLN- Reminder	02-Feb-1998	COMPLETE PROV APPLN.	08172-8009	US	DHG	08172		02-Feb-1998
Status:	Pending			✓		PRO			

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		From	01-Jan-1999	To	03-Jan-1999			
Reason for Date/ Date Type	Action Base Date	Action Type	Case Number	Country	Attorney	Client/ Case Type	Application Number	Filing Date
Due date								
02-Jan-1999	FILE NEW APPLN.	16-Dec-1998	FILE NEW APPLN.	08172-8090	US	DHG	08172	✓ E&T TO 1.8.99
Status:	Unfiled							
Remarks:	US NATIONAL STAGE APPLICATION FILING DEADLINE 1.24.99							
02-Jan-1999	FILE NEW APPLICATION	16-Dec-1998	FILE NEW EUROPEAN	08172-8091	EP	DHG	08172	✓ E&T TO 1.8.99
Status:	Unfiled							
02-Jan-1999	FILE NEW CANADIAN A	16-Dec-1998	FILE NEW FRGN APPLICATION	08172-8092	CA	DHG	08172	✓ E&T TO 1.8.99
Status:	Reminder					LMB	PCT	
Remarks:	NEW NATIONAL STAGE CANADIAN APPLICATION FILING DEADLINE 1-23-99							
02-Jan-1999	FILE NEW APPLICATION	16-Dec-1998	FILE NEW AUSTRALIAN	08172-8093	AU	DHG	08172	✓ E&T TO 1.8.99
Status:	Reminder					LMB	PCT	
Remarks:	NEW AUSTRALIAN NATIONAL STAGE APPLICATION FILING DEADLINE 1-23-99							
02-Jan-1999	11 MONTH REMINDER	02-Feb-1998	FOREIGN FILING- 08228-8002 PROVISIONAL	US	DHG	08228	60/073366	02-Feb-1998
Status:	Reminder					PRO		
Status:	Pending							

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From	01-Jan-1999	To	03-Jan-1999	
Reason for Date/ Date Type	Action	Case Number	Client/ Application Case Type Number	Filing Date
Due date	Base Date	Action Type	Country	Attorney
02-Jan-1999	02-Feb-1998	File Application	US	DHG 08228 60/073366 02-Feb-1998
Final				PRO
Status:	Pending			
02-Jan-1999	FILE COMP APPLN-	COMPLETE PROV APPLN	US	DHG 08228 60/073366 02-Feb-1998
Reminder				PRO
Status:	Pending			
02-Jan-1999	DRAWINGS DUE	02-Nov-1998 DRAWINGS DUE	08230-7002 US	DHG 08230 08/702561 11-Sep-1996
				ORD
Status:	PENDING			
02-Jan-1999	FILE APPLN.	14-Dec-1998 NEW APPLICATION	08329-8002 US	RBM 08329 ORD
Final				
Status:	Unfiled			
03-Jan-1999	FAX-ISSUE FEE	13-Oct-1998 US-Allowance	00518-6012 US	JLH 00518 08/801925 14-Feb-1997
Reminder				ORD
Status:	PENDING			

ATTY.	CLIENT/ MATTER NO.	SERIAL NUMBER	INVENTOR/MARK	ACTION/RESPONSE
MCK	P564-7003	08/776,188	Wienhues	Amdt. F 12/31
DHG	P7348-7009	08/833,173	Shimizu	Amdt. F 12/31
JLH	P514-7002	08/776,939	Connolly	Amdt. 2/2
PJB	P1614-7102	08/998,868	Noser	Amdt. Aband
DTN	P7349-7006	08/911,758	KUZUHA	Amdt. F 12/23
EME	P3213-8007	08/941,758	Hashimoto	Amdt. 2/2
DHG	P353-6037	08/76,068	Azegami	Amdt. 2/2
GEO	P7292-7002	08/872,388	Minegishi	Issue Fee F 11/16
EME	P21-7052	08/956,080	Kawahara	Issue Fee 1/4
GEO	P21-8003	09/1016,292	Nakayama	Issue Fee F 12/14
SNK	P7131-6079	08/709,572	Mochizuki	Issue Fee F 12/31
MCK	P1614-5013	08/954,180	Michaelis	Issue Fee 1/5
RBM	P1204-8010	09/121,130	Shiota	Issue Fee F 12/31
DHG	P353-7039	08/916,515	Takeda	Drawings Due F 12/14
DHG	P8230-7002	08/763,561	Jokinen	Drawings Due 1/22
PJB	P21-4049	08/901,940	Ohwye	Final Amdt. E-1 F 12/31
PJB	P21-4049	08/901,940	Ohwye	Not of Appeal E-1 2/2
EME	P3213-7018	08/951,520	Kawamura	Amdt. E-T F 12/11
GEO	P734-6001	08/756,399	Mori	Amdt. E-T F 12/11
DHG	P7292-6002	08/653,410	Takechi	New Action IN Not of Appeal E-3
MCK	P1614-7088	08/913,877	Tsakrakidis	Amdt. E-3 F 1/4
EME	P7348-6000	08/775,485	Horiuchi	Amdt. E-3 F 12/31
JLH	P518-7005	08/840,071	Ellis	E 1/4 2/20/99
KW	P1614-7023	08/876,303	Hartley	Amdt. E-3 F 12/31
RBM	P8321-8002	08/900,081	Zhang, et al	New Appl. F 12/14

A small, dark, irregular shape, possibly a seed or a small insect, with a thin stem extending downwards.

Date: 1/2/99 (Continued)